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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,070	02/11/2004	George P. Stolzenfeld	AMI P-3003-3	2110
29318	7590	01/03/2008		
JAMES D. STEVENS REISING, ETHINGTON, BARNES, KISSELLE, P.C. P.O. BOX 4390 TROY, MI 48099			EXAMINER ELOSHWAY, NIKI MARINA	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 01/03/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/776,070	Applicant(s) STOLZENFELD, GEORGE P.	
	Examiner Niki M. Eloshway	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-38 is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-34, 39, 41 and 43 is/are rejected.
- 7) ☒ Claim(s) 8, 40 and 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 5, 2007 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 7, 9-14, 18, 21, 23, 24, 29, 30 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobi (U.S. 4,949,878). Jacobi teaches a bung at 91 having a first wall 34 with a fastening feature 36, a second wall at 97 and a fusible link shown adjacent lead line 99 in figure 3. See col. 5 lines 3-6 regarding the polymeric material of claim 2.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 15 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878) in view of Bouc et al. (U.S. 6,571,972). Jacobi discloses the claimed invention except for the polymeric material being HDPE. Bouc et al. teaches that it is known to form a bung of HDPE (see col. 3 lines 48-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi made of HDPE, as taught by Bouc et al., since HDPE is a well known and widely used material in the container art which offers sufficient strength with a reduced weight.

6. Claims 4-6, 16, 17, 27-29, 31, 32 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878). Regarding claims 4, 16, 27, 29, 31 and 43, Jacobi discloses the claimed invention except for the thickness of the thin walled sections being less than or equal to 0.04 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with the thin walled section having a thickness of less than or equal to 0.04 inches, since it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claims 5, 17, 28 and 32, Jacobi discloses the claimed invention except for the width of the fusible link being less than or equal to 0.312 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with the width of

the fusible link being less than or equal to 0.312 inches, since it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

7. Claims 19, 20, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878) in view of Wildfeuer (U.S. 5,074,428). Jacobi discloses the claimed invention except for the sealing ring and annular rib. Wildfeuer teaches that it is known to provide a closure with a sealing ring and annular rib adjacent the first wall (see elements 9 and 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with the sealing ring and annular rib of Wildfeuer, in order to better seal the container and prevent leaks.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878) in view of Stolzenfeld (U.S. 5,573,135). Jacobi discloses the claimed invention except for the notches. Stolzenfeld teaches that it is known to form a bung with notches for a tool to engage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with tool notches, as taught by Stolzenfeld, in order to allow firm grip of the bung for removal by a conventional tool.

8. Claims 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stolzenfeld (U.S. 5,573,135) in view of Bouc et al. (U.S. 6,571,972). Stolzenfeld discloses the claimed invention except for the polymeric material. Bouc et al. teaches that it is known to form a bung of HDPE (see col. 3 lines 48-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Stolzenfeld made of HDPE, as taught by Bouc et al., since HDPE is a well known and widely used material in the container art which offers sufficient strength with a reduced weight.

Allowable Subject Matter

9. Claims 35-38 are allowed.
10. Claims 8, 40 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed December 5, 2007 have been fully considered but they are not persuasive. Applicant argues that Jacobi does not inherently meet the claim limitations. The express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103. There is no requirement that a person of ordinary skill in the art would have recognized the inherent disclosure at the time of invention, but only that the subject matter is in fact inherent in the prior art reference. *Schering Corp. v. Geneva Pharm. Inc.*, 339 F.3d 1373, 1377, 67 USPQ2d 1664, 1668 (Fed. Cir. 2003). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). The fusible link, as set forth in the present application, is an area of closure which softens and/or melts to the point of rupture at elevated temperatures. It is the examiner's position that the Jacobi closure is capable of performing such a function under the appropriate circumstances. The technical reasoning supporting the position of inherency is that Jacobi teaches an area of decreased thickness between the inner and outer walls, which is unsupported or not reinforced by the neck of the container and therefore is the point most susceptible to melting or fracture.

12. As seen in figure 3 of Jacobi, the closure has an area of decreased thickness between the inner and outer walls. Applicant argues that the outer flange wall 34 of Jacobi, has a thinner dimension than the area between the inner and outer walls. It is the Examiner's position that the outer flange wall 34 is not the weakest portion of the closure when the closure is in the applied position because it is reinforced by the threaded neck of the container.

13. Applicant argues that there is no technical basis to support that the container neck helps insulate or helps heat the outer flange. It is the Examiner's position that since the container is not part of the claimed invention (the claims are drawn to the closure, alone), the container neck would reinforce and insulate the outer flange wall 34, when the closure is applied to a container with an appropriate neck thickness and which is made of an appropriate material or combination of material.

14. It has been held that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, because apparatus claims cover what a device is, not what a device does (*Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). Thus, if a prior art structure is capable of performing the intended use as recited in the preamble, or elsewhere in a claim, then it meets the claim. Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977).

15. Regarding the limitation that the link melts prior to the remainder of the body, this limitation is met by Jacobi because the area between the inner and outer walls is of decreased thickness and is unsupported by the container.

16. The arguments regarding Luburic not being a bung, are convincing and, therefore, the rejections based on Luburic have been withdrawn.

17. The arguments regarding the vent modification using Stolzenfeld as a secondary reference are convincing and, therefore, the rejection of claims 8, 35-38, 40 and 42 have been withdrawn.

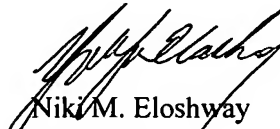
Conclusion

18. **THIS ACTION IS MADE NON-FINAL.**

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Niki M. Eloshway
Examiner
Art Unit 3781

nme